



COLORADO

**Department of
Regulatory Agencies**

Division of Insurance

Colorado Division of Insurance FAQs on COVID-19 Telehealth Services

1. What is telehealth? How has it changed based on the Governor's Executive Order and DOI emergency regulation 20-E-05?

The term "telehealth" generally refers to the exchange of medical information from one site to another through electronic communication to improve a patient's health. In Colorado law, telehealth is defined in Colorado Revised Statutes (C.R.S.) Section 10-16-123(4)(e). On March 17, 2020, the Colorado Division of Insurance (the Division, or DOI) released emergency regulation [20-E-01](#), requiring health insurance companies to provide coverage for COVID-19-related in-network telehealth services with no cost sharing for the covered person.

On April 1, 2020, Governor Polis issued Executive Order [D 2020 020](#), temporarily suspending certain statutes to expand the use of telehealth services for both COVID-19-related care and non-COVID-19-related care due to the presence of COVID-19 in Colorado. The Division's emergency regulation [20-E-05](#), effective on April 4, 2020, directs health insurance companies in Colorado to take the following actions during the COVID-19 public health emergency:

- Provide coverage of all medically necessary health care services that can be appropriately provided through telehealth, not just services related to COVID-19;
- Allow the use of additional technologies for telehealth, including phone-only communication, during the COVID-19 emergency;
- Reimburse providers using telehealth services at rates no lower than what they would be paid if the services were delivered in-person;
- Suspend or waive restrictions on provider location, certification, or training as a condition for payment;
- Provide clear instructions to providers to facilitate telehealth billing and reimbursement; and
- Allow for the provision of telehealth services by out-of-network service providers if in-network providers are not available.

2. Which health plans are required to comply with the new telehealth benefit requirements?

DOI emergency regulation [20-E-05](#) applies to plans regulated by the State of Colorado, including individual, small group, large group, managed care plans (i.e., HMOs), and student health plans.

For Medicare providers and patients, the Centers for Medicare and Medicaid Services (CMS) has released guidance expanding the use of telehealth services during the COVID-19 public health emergency. Providers are encouraged to visit the CMS [Current Emergencies](#) website for further information.

For Health First Colorado (Medicaid) providers and patients, the Colorado Department of Health Care Policy and Financing (HCPF) has also released information on telehealth service delivery. Information is available on HCPF's [COVID-19 Information for Health First Colorado and CHP+ Providers and Case Managers](#) website.

Regarding employer-provided health insurance, the Division's emergency regulation only pertains to health insurance companies' employer policies that are regulated by the Colorado Division of Insurance. Employers with self-funded health plans are not regulated by the Division, as such plans are regulated at the Federal level (under ERISA). The Division strongly encourages employers that have self-funded health plans to request that the third-party administrators of their health plans comply with state and federal guidance, including the Division's directives, on telehealth during the COVID-19 emergency.

3. Which providers can be reimbursed for telehealth services?

The Governor's Executive Order [D 2020 020](#) applies to Colorado health care providers, including veterinarians, and specifically suspends restrictions around the amount of days certain providers living out of state, including psychologists, marriage and family therapists, clinical social workers, professional counselors, or addiction counselors, are allowed to practice in the state of Colorado.

In accordance with DOI emergency regulation [20-E-05](#), carriers are required to reimburse health care providers *who are licensed or otherwise authorized to deliver health care services in the state*, as defined in Colorado Revised Statutes Section 10-16-102(56). This definition includes, but is not limited to:

- Physicians;
- Physician assistants and nurse practitioners;
- Physical, occupational therapists, and speech therapists;
- Licensed or certified mental health professionals;
- Licensed clinical social workers, licensed social workers; and
- Dentists.

Providers who do not meet the definition in CRS Section 10-16-102(56), such as registered dietitians and nutrition professionals, are not covered by this regulation, but carriers may elect and are encouraged to cover telehealth services offered by such providers. The list of providers covered by the Division's regulation may differ from [Medicare guidance](#).

4. Are telehealth services subject to cost sharing requirements?

Emergency regulation [20-E-05](#) requires health insurance companies to cover all medically necessary health care services that can be appropriately provided through telehealth, *but does not waive cost sharing for these telehealth services*. However, the companies are required to cover cost sharing for telehealth services related to COVID-19, per DOI emergency regulation [20-E-01](#). CMS issued guidance on [March 24, 2020](#), encouraging all health insurers to cover telehealth services without cost sharing or other medical management requirements. Certain health insurance companies have indicated they will waive cost sharing for telehealth services; consumers are encouraged to contact their company to determine if cost-sharing has been waived for telehealth services.

5. Does a telephone-only call qualify as reimbursable for telehealth services during the emergency?

Yes. Under the Governor's Executive Order [D 2020 020](#) and DOI emergency regulation [20-E-05](#), health care providers can use audio visual and telephone communications systems, including audio-only telephone calls and non-public facing live video technologies (such as Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, or Skype) to provide telehealth services for medically necessary care during the COVID-19 public health emergency. This allowance will be in effect as long as the Governor's Emergency Declaration is in effect, or 120 days from the effective date of the emergency regulation, whichever is shorter.

6. What types of services do not qualify for telehealth?

During the COVID-19 public health emergency, health insurance companies are required to cover medically necessary services that can be appropriately delivered through telehealth. Telephone calls with health care provider office staff and other calls for administrative purposes, such as requests for refills, scheduling, and payment or billing issues are not billable services. Providers should also be careful not to double bill for services; for example, some follow-up visits may be considered to be part of a global package of services, and should not be billed as a separate encounter. Insurers are required to notify health care providers of any instructions necessary to facilitate billing for telehealth, and make this information prominently available on their websites.

7. What requirements can the health insurance companies impose, such as prior authorization and other medical management requirements, as a condition of telehealth services?

Health insurance companies cannot impose limitations on services, such as prior authorization and other medical management requirements, solely because the services are delivered via telehealth rather than in-person. The Division encourages insurers to streamline processes during the COVID-19 emergency so that covered persons can easily access needed telehealth services.

8. Can an insurer require the use of certain types of platforms to reimburse?

No. DOI emergency regulation [20-E-05](#) prohibits health insurance companies from imposing limitations on the technologies or “platforms” used to deliver telehealth services, including any limitations on the use of audio only or live video technologies. However, the regulation requires health care services be delivered through “non-public facing” remote communication platforms or products in order to be considered telehealth services during the COVID-19 public health emergency.

A “non-public facing” remote communication product is one that, as a default, allows only the intended parties to participate in the communication. Non-public facing remote communication products would include, for example, platforms such as Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, Whatsapp video chat, Zoom, or Skype. Such products also would include commonly used texting applications such as Signal, Jabber, Facebook Messenger, Google Hangouts, Whatsapp, or iMessage. Typically, these platforms employ end-to-end encryption, which allows only an individual and the person with whom the individual is communicating to see what is transmitted. The platforms also support individual user accounts, logins, and passcodes to help limit access and verify participants. In addition, participants are able to assert some degree of control over particular capabilities, such as choosing to record or not record the communication or to mute or turn off the video or audio signal at any point.

In contrast, public-facing products such as TikTok, Facebook Live, Twitch, or a chat room like Slack are not acceptable forms of remote communication for telehealth because they are designed to be open to the public or allow wide or indiscriminate access to the communication

9. What settings are acceptable for providing or receiving telehealth services?

Insurance companies cannot impose any requirements or limitations on telehealth services based on the site at which either the patient or the health care provider is located at the time the health care services are delivered. Per [Office of Civil Rights \(OCR\)](#) guidance, providers should use private locations and patients should not receive telehealth services in public or semi-public settings, absent patient consent or exigent circumstances. If telehealth cannot be provided in a private setting, covered health care providers should continue to implement reasonable HIPAA safeguards to limit incidental uses or disclosures of protected health information (PHI).

10. Are there specific codes that health care providers should use to bill for telehealth services?

Claim and billing questions for state-regulated insurance plans should be directed to the insurance company. In general, health care providers can bill typical code ranges for medically clinically appropriate services delivered via telehealth, using appropriate code modifiers and location codes. DOI emergency regulation [20-E-05](#) directs health insurance companies to notify providers of any instructions necessary to facilitate billing for telehealth, and post this information prominently on a public-facing website.

Insurers may request that providers include a specific telehealth code (i.e., a place of services code or telehealth modifier) when submitting claims for reimbursement. However, per DOI emergency regulation 20-E-05, health insurance companies must reimburse in-network providers for services delivered via telehealth at rates no lower than in-person services, and in compliance with state behavioral health parity laws.

CMS maintains a list of services that may be furnished via telehealth to Medicare beneficiaries during the COVID-19 public health emergency, available here:

www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes.

Information about billing and coding for telehealth services furnished to Health First Colorado (Medicaid) clients is available on the Colorado Department of Health Care Policy and Financing website at:

www.colorado.gov/pacific/hcpf/provider-telemedicine

11. How do the Division's telehealth requirements apply to catastrophic plans or high deductible health plans (HDHP)?

Catastrophic health benefit plans are generally not required to provide coverage of essential health benefits (EHB), including coverage for the diagnosis or treatment of COVID-19, before an enrollee meets their plan deductible, with limited exceptions including: 1) the coverage of at least three primary care visits per year, and 2) any cost sharing delivered for preventive services.

However, on [March 24, 2020](#), CMS released guidance allowing carriers to amend catastrophic plans to *allow pre-deductible coverage for telehealth services*, even if the specific telehealth services are not related to COVID-19. In accordance with this guidance, the Colorado DOI will allow, and strongly encourages, insurance companies to cover all medically appropriate telehealth services without requiring enrollees to meet the deductible during the COVID-19 public health emergency. Insurers are NOT allowed to limit or eliminate other benefits to offset the costs of providing pre-deductible coverage for telehealth services.

High deductible health plans (HDHP) are generally prohibited from covering any health care services, other than preventive care, until an enrollee has met the full plan deductible. However, in recognition of the nature of COVID-19 public health emergency, and the need to avoid administrative delays or financial disincentives that might otherwise impede testing for and treatment of COVID-19 for participants in HDHPs, the U.S. Internal Revenue Service (IRS) announced on [March 11, 2020](#) that *all HDHPs will be allowed* to cover medical care services received and items purchased associated with testing for and treatment of COVID-19 that are provided by a health plan without a deductible, or with a deductible below the minimum annual deductible otherwise required. In accordance with CMS guidance, the DOI will allow, and strongly encourage, health insurance companies to provide pre-deductible coverage for health care services, including services coverage via telehealth, for enrollees in HDHP. Carriers are NOT allowed to limit or eliminate other benefits to offset the costs of providing pre-deductible coverage for telehealth services.

12. Will the DOI allow health insurance companies to amend plan benefits during a plan year to provide or expand coverage for telehealth services, and to reduce or eliminate cost sharing for such services?

Yes. The DOI, in accordance with CMS guidance, will allow health insurance companies in the individual or group market to make mid-year changes to the health insurance product to provide greater coverage for telehealth services or to reduce or eliminate cost-sharing requirements for telehealth services, even if the specific telehealth services covered by the change are not related to COVID-19. Insurers are NOT allowed to limit or eliminate other benefits or to change rates to offset the costs of increasing the accessibility of telehealth benefits.

13. How does HIPAA, and other privacy and confidentiality rules including 42 C.F.R. Part 2, apply to telehealth services during the COVID-19 public health emergency?

The U.S. Office of Civil Rights (OCR) has recognized that during the COVID-19 public health emergency, health care providers may need to communicate with patients and provide telehealth services through remote communications technologies, some of which may not fully comply with Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements. To facilitate the expanded use of telehealth services in response to the COVID-19 pandemic, the OCR announced on [March 17, 2020](#), that it would not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against providers in connection with the good faith provision of telehealth during the COVID-19 nationwide public health emergency. This exercise of discretion applies to telehealth provided for any

reason, regardless of whether the telehealth service is related to the diagnosis and treatment of health conditions related to COVID-19.

Coverage of telehealth services for mental health and substance use disorders is required under mental health parity laws, and of particular importance during the COVID-19 public health emergency. In addition to HIPAA, substance use information is also subject to federal rules in 42 C.F.R. Part 2. The Substance Abuse and Mental Health Services Administration (SAMHSA), recognizing the difficulties that substance use disorder patients may face in accessing services during the COVID-19 public health emergency, released guidance on [March 19, 2020](#) noting that prohibitions on use and disclosure of patient identifying information under 42 C.F.R. Part 2 would not apply in situations where a health care provider may not be able to obtain written patient consent for disclosure of substance use disorder records due to circumstances related to COVID-19. SAMHSA emphasized such flexibility is allowed only to the extent that, as determined by the provider(s), a medical emergency exists. Under the medical emergency exception, providers are required to make their own determinations whether a bona fide medical emergency exists for purposes of providing needed treatment to patients.

14. Can health care providers in quarantine continue to provide and be reimbursed for telehealth services?

Yes. Per DOI emergency regulation [20-E-05](#), carriers are not allowed to restrict the use of telehealth based on provider or patient location. A provider under quarantine can continue to provide and be reimbursed for telehealth services, as long as they are able and have access to the resources needed to provide appropriate care. Providers should follow [Office of Civil Rights \(OCR\)](#) guidance regarding patient privacy and confidentiality, and take reasonable safeguards to limit incidental uses or disclosures of protected health information (PHI).

15. What remote monitoring devices are included as part of telehealth service delivery?

Remote monitoring devices, per DOI emergency regulation [20-E-05](#), are digital technologies to collect or monitor medical and other forms of health data from individuals in one location and electronically transmit that information to health care providers in a different location for assessment, diagnosis, consultation, treatment, education, care management, self-management or recommendations of a covered person's health care. Remote neuromonitoring related to surgical procedures is not included as part of telehealth services addressed by DOI emergency regulation [20-E-05](#).

16. Does a health care provider need to have an existing relationship with a patient in order to be reimbursed for telehealth services?

No. Per DOI emergency regulation [20-E-05](#), carriers are not allowed to require enrollees or health care providers to have a previously existing relationship in order for telehealth services to be reimbursed. Previous restrictions on telehealth, such as requiring an in-person first visit, cannot be applied during the COVID-19 public health crisis.

17. What kinds of medications can be prescribed through telehealth?

Health insurance companies are required to provide at least one additional refill of all necessary prescriptions to ensure plan enrollees have access to necessary medications, per the Division's emergency regulation [20-E-01](#). Certain prescriptions with a high likelihood of abuse, such as opioids, and certain controlled substances used to treat opioid use disorder, were not included in [20-E-01](#).

Recent federal guidance has waived certain restrictions around in-person visits with prescribers and/or treatment programs. On March 17, 2020, the Drug Enforcement Agency issued guidance permitting patients to be initiated on buprenorphine through a telehealth visit, without an in-person exam. SAMHSA released additional guidance on [March 19, 2020](#), reiterating that new opioid treatment program patients can be started on buprenorphine via telehealth, including phone only encounters. This flexibility does not apply to patients starting on methadone, which still requires an in-person visit to initiate treatment. Additional guidance released by the DEA on [March 31, 2020](#), confirms follow-up visits for both buprenorphine and methadone can be completed via telehealth, including phone only.

Health care providers should follow federal and state guidance surrounding appropriate prescribing practices during the COVID-19 public health emergency, and stay informed of updates in a rapidly changing environment. Insurers must reimburse all medically necessary prescriptions to ensure patients, particularly those facing challenges to accessing treatment for behavioral health conditions, during the COVID-19 emergency.